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Reorganization of State Administration in California.

IT IS becoming more and more clear to the popular judgment that the organization of the administrative branch in American state government rests on an unscientific basis and suffers from unfortunate traditions. In several states commissions are at work to investigate and report changes. Governors' messages complain of the lack of unity and responsibility in the execution of business entrusted to their care. The creation of "Boards of Control" is one attempt to devise a form of executive supervision and to bring the dissociated branches of public service into harmony.

The difficulty centers in the weak position of the American state governor. The first American state constitutions were framed during the years of the Revolutionary War. Popular feeling was radical. It particularly distrusted the executive power. In nearly all the colonies there was a tradition of long and bitter conflict between the local legislatures and the colonial governors. Consequently in these state constitutions the governor was given as little power as possible. In most of the constitutions he possessed neither the power of veto nor the pardoning power. Appointments were ordinarily not entrusted to him but were made by the legislature, or, in the case of New York State, by a "Council of Appointment". Wherever the power to appoint was conferred, it was not accompanied by the power of removal.

As the progress of democratic belief led to constitutional changes there arose the system of direct election of important state officials and as new administrative needs arose these duties were confided to "boards" or "commissions", beyond gubernatorial control.

Recent years, however, have seen an astonishing rise in the position of State Governor. Politically the office has become next

in importance to that of President. In the control of party action and policies it has captured the influence represented not many years ago by the American Senate. Directly elected by the people, necessarily representative of the prevailing will of the commonwealth, in close touch with public opinion, the state governor is today an impressive political figure. Administratively, however, he continues to be weak. Charged with the duties of seeing that the laws are executed, he ordinarily has no control over the officers who must carry out this execution. The heads of state administration have the same tenure as himself, and may belong to an opposing party or represent policies to which he himself is opposed. The absence of the removal power makes it impossible for him to direct the action of the numerous offices and boards to which state administration is entrusted, and most state business continues to be confided to obscure individuals or bodies equally removed from the influence of public opinion and of superior executive supervision. It is this situation that makes it difficult or impossible for the American state to have an administrative policy, to enforce an economical use of state funds, to suppress or withhold unnecessary expenditures and to attain a uniform grade of effectiveness and responsibility in state business.

It is the more remarkable that the American people should tolerate an unsatisfactory and illogical type of government when they have constantly before them the model of federal administration. The temper of the convention that framed the federal constitution was strikingly different from that which devised the early state constitutions. It was practical rather than theoretical. It had profited by the experience of the confederation and its inefficient committee system of diffused responsibility. It felt the need of concentrating authority in the chief executive of the nation, and it created the powerful office of President. Departments and bureaus, as these have been successively authorized by Congress, have been made wholly subordinate to the President. Popular dissatisfaction with the work of any of them falls at once upon the chief executive, who has the remedy in his own hands. The result is that the American people in their federal administration have a system of national government as efficient, as responsive to public opinion, and probably as economical, as exists on a large scale anywhere. The acts and decisions of a subordinate branch of the national administration are usually accepted with complete confidence, and the variety of business entrusted

to the federal government annually increases. On the other hand, it is only a governor of unusual robustness of character with the advantage of repeated terms of office who is able to impress his policy generally upon the state administration.

Very gradually the American public is coming to recognize that in government there is a sharp distinction between "politics" and "administration". There are certain questions of government which are political and which in a democracy can only be rightly decided by the people themselves or by their directly elected representatives. They embrace all questions of general policy, of expenditure, of the regulation of conduct, and of pains and penalties. On the other hand, a large field of government is administration. It is concerned simply with carrying the popular determination into effect. It should be done without reference to party or political consequences. The state is interested only in having it done competently, economically, and with consideration for the public. Such work to be done well must have unity, a common standard, and continuity. All practical experience, as well as all sound theory, shows that these ends can be accomplished only by keeping administration distinct from politics, by giving it an appointive tenure, and by subjecting it to superior executive supervision. This last point, which is very important, is frequently overlooked by the American people. In much recently devised administration, and particularly in that of a "reform" character, the effect has been to create complete independence of supervision. The typical form is a "commission" appointed with a long tenure of office which cannot be interrupted, and endowed with powers over which there is no administrative review. In some cases continuing appropriations, adopted by constitutional amendment, have put administrative bodies beyond legislative as well as executive control. Such organization rests upon a complete misunderstanding of sound administrative principles. The political field and the administrative field must be sharply distinguished, but in popular government administration must always depend upon and be subordinate to politics. The creation of irresponsible commissions is simply oligarchical government. Exceptions may perhaps be made as to an independence of tenure in the case of judicial or quasi judicial bodies, like the United States Commerce Commission, the Federal Reserve Board, or a state public utilities commission, or, in the case of bodies created for the administration of a trust, like the regents of state uni-

versities, but these exceptions scarcely weaken the force of the principle, that if the state administration is to be continuously well done and done in accordance with a policy which the people of the state have endorsed and approved, it must be subject to the administrative control of the government which the people have chosen.

An American state governor, desirous of putting the public business of his commonwealth upon an economic and effective footing, finds his efforts limited not only by this deep seated distrust of administrative power and insistence upon confiding executive discretion to a great number of dissociated, independent and irresponsible offices, but also by the further American prejudice of undue local autonomy, extending not merely to the legitimate principle of a home rule in home affairs, but to independence and irresponsibility in the discharge by local officials, not of local affairs but of state business, including such fundamental matters as public peace and health. For the past thirty years there has been observable in this country a growing disposition to centralize state administration, or at least to create some sort of state control over state business locally conducted; but instead of employing the direct and simple device of giving the governor authority to suspend or remove a sheriff or a district attorney who fails or refuses to preserve the peace of the state or to enforce its laws, or to replace an incompetent health official in the moment of epidemic, imperfect and cumbersome forms of control have been sought; and frequently in place of the simple and effective principle of administrative supervision, resort must be had for the enforcement of a disregarded law to the dilatory and expensive remedy of the courts.

The State of California may be taken as a good example of an American commonwealth alive to the fact that an increasing range of public interests must be entrusted to the state government, extremely busy with legislation creating new kinds and forms of public business, but embarrassed in the organization of its service by a traditional administration that is still largely un-unified, inharmonious, and irresponsible.

An analysis of the present state administration discloses a number of distinct forms. In the early history of the state all important offices were elective, and elective offices still include, beside the Governor and the Lieutenant Governor, the Secretary of State, the Attorney General, the Controller, the Treasurer, the

Surveyor General, and the State Superintendent of Public Instruction. As pointed out above, these officials do not, like the President's Cabinet, form a harmonious staff, but each is quite separate from the others and from the Governor, and free to pursue a policy unrelated to the interest of other branches and dictated by considerations personal to the official. As to the manner in which these elected officials perform their duties the public gains at best an imperfect impression and usually can form no judgment at all.

Early in the history of the state it became customary, as new administrative agencies were required, to create "ex-officio boards", made up wholly or in part of elective officials. There are seemingly two different ideas behind these ex-officio boards. First, that they are economical, that public officials have less business than they can properly discharge, and may profitably be employed in giving their time to added duties. Second, that by placing the governor upon some of these boards a certain command is accorded him over the administration. The attorney general and the secretary of state, next to the governor, are officials most usually found upon ex-officio boards. In spite of a one time prejudice in their favor, this type of administration has not in general proved fortunate. It is not usually true, or should not be, that an official has time for service upon boards unrelated to his main interests and duty. It is notorious that of boards made up partly of ex-officio and partly of lay members, the ex-officio members are seldom present. So far as the governor is concerned, while his presence on a board may sometimes give him an influence which he would not otherwise have, it none the less places him in a false position. The governor, from the administrative point of view, is not "one among equals". He is or should be always a superior executive authority. To frequently override his view and his vote on an administrative board, is to impair his legitimate position. On the other hand a strong and influential governor, when he attends a board of which he is a member, is known to generally have everything his own way. The disposition is clearly to give up the ex-officio board form. The number of offices constituted in this manner is declining. Among boards of which the governor was a member there have been recently suppressed or reorganized the Board of Education, the Board of Examiners and the Capitol Commission.

The most economical, and on the whole the most efficient form for a public office, is the "bureau". The bureau implies a single

appointive head, who has complete administrative supervision over the personnel and activities of the bureau. The associates of the chief of the bureau are his adjutants and subordinates. While he may rely in a great degree upon their advice and initiative, he is alone responsible for the conduct of the office. The bureau as a modern form of administration appears to have arisen in France along with the other great administrative achievements of the Grand Monarchy. From France it has been generalized all over the world. It is almost uniformly employed by the federal government of the United States and by the government of the Philippine Islands, but owing to causes which have already been described, primarily the distrust of one-man authority, it has very little place in American state and local governments. Its strong points are its economy, the definite fixing of responsibility, the power of swift action, and in case good ability is secured in the directive head, the full command of this ability by the state. Its weak points are a disposition to routine, to the establishment of unduly rigid methods, and the development of over-conservative ideas, or what is commonly called bureaucratic red tape. Two conditions are requisite for the successful conduct of bureau administration; these are: (1) a superior administrative control and (2) the application of the "merit principle" to the subordinate personnel of the bureau, providing an examination basis for appointment and security of tenure. In this state a number of important offices are bureaus: the State Banking Department, the Building and Loan Commissioner, the Bureau of Labor Statistics, and the Printing Office since 1911, when the office of state printer was made appointive by the governor. Over the conduct of these bureaus the governor has immediate control through the power of removal from office. He does not have, however, what is essential to close supervision, a department secretary or staff colleague through whom oversight can be exercised. The development of a state civil service system should assure the conduct of these offices on a merit basis. Other offices of the state, with a single executive head like the Insurance Commissioner, Mineralogist, Horticulturist and Veterinarian are "irresponsible bureaus". The governor appoints the head for a fixed term without power of removal. His sole control is through his right of investigation. Normally a large portion of a governor's term expires before such positions are filled by officers of his own selection.

There are perhaps other reasons why the American people have

commonly preferred multiheaded authority, a group of officials coordinate in power, but certainly the compelling motive has been distrust—the notion that it is more difficult for three or five men to do wrong than for one. This typically Chinese conception, which determined the form of nearly every institution under the former Manchu regime, is likewise a fixed American prejudice. It has given us the “commission” form of administration.

By a commission is understood a collegiate executive, usually three to five persons, supposedly possessed of executive qualifications appropriate to their task, salaried, meeting daily or with great frequency and jointly administering the business entrusted to them. The doctrine of “separation of powers” eagerly appropriated by our forefathers from Montesquieu’s *Esprit des Lois*, is, in the commission type of government, often wholly discarded. A commission frequently has, besides executive powers, a legislative or ordinance power and the functions of a court. Commissions have been frequently employed by the government of Great Britain, and some of the most famous bodies in English constitutional history were of this character, but it is interesting to observe that in England commissions in many instances have been abandoned, and while the pretense of a commission is preserved, executive authority has been fully conferred upon a single individual. The highest example of this in English government is perhaps the Treasury, which in earlier constitutional periods was actually discharged by the “Lords Commissioners for executing the Office of Lord High Treasurer”. Legally, the financial affairs of the nation are still entrusted not only to the Chancellor of the Exchequer but to four other officials as well, the First Lord of the Treasury and the Junior Lords. Actually, however, only the first of these officials has anything to do with the administration of finance. The First Lord of the Treasury has come to be a position with practically no duties, and is ordinarily assumed by the Prime Minister, while the Junior Lords of the Treasury are the party whips in the House of Commons. The same is true of other British commissions, such as the Local Government Board, the Education Board, and the Board of Trade. In all of them, while the title is retained, the collegiate principle has been abandoned in favor of single or ministerial responsibility. But in American state and local governments commissions continue to occupy a very large field.

Except for administrative bodies that are judicial or quasi-

judicial in their functions, it is doubtful if the commission type of government realizes the expectations placed in it. In practice joint responsibility is seldom attained. Usually the policy of a commission is controlled by its chairman, or some other dominant personality in its membership. There is a disposition to occupy too much time in the discussion of minor details, and the effort at adjustment of view and accommodation of interest finally proves irksome. It frequently results in a commission that business is distributed among the different members, and then, almost invariably, that each member comes to look upon his particular assignment as his individual interest, to resent the intrusion of the views of others, and thereby destroy the principle upon which commission government rests.

A process of this kind took place in the work of what was undoubtedly the most important commission ever created under authority of the United States, namely the Philippine Commission, which governed the Philippine Islands from 1900 to 1907. During the early period of the work of this body, when its policy was dominated by Mr. Taft, all important matters were resolved by the commission as a whole, and authority and responsibility were truly collegiate, but eventually its character changed, members became heads of departments, each with preponderating interest in a special field, and in the end the body as an administrative agent lost most of its collegiate character. Something of the same history is exhibited in the commission government of cities at the present time.

Both popular discussion and legislative parlance frequently use the terms "commission" and "board" as synonymous. Administrative bodies are frequently termed "boards of commissioners", and a commission is often called a board, or a board a commission. For example, the California Industrial Accident Board is in reality a commission, while the Fish and Game Commission is really a board. The board type of administration as distinguished from the commission, reposes the administrative authority and responsibility not in a college of paid expert officials who directly execute the administrative task, but in a group of laymen, presumably representative citizens who are willing to assume the supervision and responsibility over a public task or a state institution, without salary but for the gratification of their own public spirit, or for the distinction and influence which public office bestows. Such a board, when acting according to the best principles of procedure,

does not itself actively administer affairs either as a board or through committees, but chooses an executive officer who is presumably an expert, who is salaried, and who gives his entire time to the institution under the board's jurisdiction. Good policy recommends that all administrative details, the nomination of subordinate employees and the formulation of policy, be entrusted to this executive, subject to the review and approval of the board. The board is in fact a lay jury sitting in judgment upon the plans and conduct of the expert in office. It almost invariably has the right to remove the official without statement of definite reasons. The executive official must therefore at all times possess the confidence of the board, and having this he is usually given very large discretion. In such cases it is a common remark that the superintendent, or whatever he may be called, "runs the board". This reflection, however, is in reality no disparagement of either the board or of the system. Any abuse of authority, any public scandal, any demonstrated incapacity, sees the assumption by the board of the full measure of its responsibility, and the necessary corrective action is taken.

The board is an exceedingly common type of administration in the United States, and on the whole it has worked tolerably well. It has certain elements of strength. At its best it secures for the state, without compensation, business experience and frequently legal capacity of a high order. There is no more encouraging phenomenon in American public life than the readiness with which men of large reputation and responsibilities will give generously and disinterestedly of their time and strength in service upon public boards. It has the advantage of associating in government the layman and the permanent official, and is the peculiarly American device for accomplishing this valuable end. The French system appears to prefer to associate with the executive official a lay council of purely advisory functions. The English system is the committee, on which laymen and official experts serve together. The German plan is the somewhat complicated but impressive association of the paid official and the experienced citizen in a relationship in which official authority decidedly predominates. But in the United States, cooperation in public business between men within and outside of official life is secured by the board and it is improbable that citizens of distinction and ability could be induced to serve either in an advisory capacity, as in France, or in a subordinate capacity as in Germany. In

America it is quite obviously the sense and pleasure of authority which compensates a man in whom the administrative instinct is strong for the sacrifice of his time and efforts in serving on a state board.

That there are corresponding disadvantages in the American board plan no one can deny. There is a strong disposition for members to "do politics", or to take administrative tasks out of the keeping of the executive of the board and entrust them to individual members or to committees. There is perhaps at all times too little intimate acquaintance of board members with the institution whose affairs they are responsible for. They may know its formal business but not its actual life. Knowledge of its deficiencies reaches them from outside complaints, not as a result of their personal knowledge and investigation. Furthermore, responsibility is diffused among a number of individuals who can usually find arguments for escaping the consequences of errors.

One serious difficulty of the board plan remains; it dissevers state administration into an indefinite number of uncorrelated independent units. It defeats unity in state administration. And inasmuch as appointments to membership on boards are almost invariably for fixed terms, it becomes impossible to hold the chief executive of the state responsible for the economy, honesty or effectiveness of the conduct of the institution's affairs. The State of California has seven state normal schools for training teachers. Each one is governed by an independent board which has practically no contact with the others, but determines its own policies and seeks its own individual legislative support. There are seven state hospitals for the insane similarly governed.

It must be apparent to anyone who studies carefully the work of the numerous commissions, boards, bureaus and elective offices of the state that the public service could be greatly improved, a large saving effected and a much greater responsibility to public opinion realized, if authority was centralized and unified—if, in other words, the administrative powers of the state governor were made commensurate to his political importance, his public position and his responsibility to popular will. It must also be apparent that our affairs are progressing toward this end. The Legislature of 1911 made the position of State Printer appointive, and increased to fourteen the number of positions where the occupant of the office holds his position during the pleasure of the governor.

A recent constitutional amendment has made the State Railway Commission an appointive body, where it was before popularly chosen. The Board of Control created in 1911 is another device for extending the governor's authority. The members of this "board", which according to our definition is a "commission" are appointed by the governor and hold office at his pleasure, and necessarily execute his policy in their control of the finances of state institutions.

In his message at the opening of the Legislature in 1913 the governor of this state expressed his need for another "arm" as he called it, an administrative board which should have a control over the administrative policy of state institutions commensurate with the financial jurisdiction of the Board of Control. This need was not met by the Legislature, and still remains unsatisfied. It would probably, however, be a more simple and much more workable plan not to create another and different board, but to increase the membership of the present Board of Control, enlarge its functions and alter its character. "Financial" and "administrative" supervision are too much one and the same thing to be successfully dissociated and entrusted to different bodies. What the governor really needs is an administrative council of at least six members appointed by him from men who possess his confidence, who will serve both as the directing heads of so many departments of state government, and as an advisory council for the consideration of the numerous political and administrative cares which constantly arise.

This second function is hardly less important than the first. No great executive office can be ably filled in default of wise and responsible counsel. A large measure of the success of the office of President of the United States attaches to the cabinet. It is essential that the closest advisors of a chief executive should be not merely men who are loyal adherents of his party and policies, but, like the chief executive himself, vested with the moderating responsibilities of public office, who are known to the public as those particularly charged with the state's affairs, and who, both by the governor and by the people, can be held to account for their success or mismanagement. The absence of such official advisors in American state government has had the unwholesome effect of causing the governor to lean upon unofficial advice, and at times to accept not merely the counsel but the dictation of men

not known to the public or enjoying public repute. The "state boss" is the legitimate result of a weakly constituted executive.

To properly reorganize the administration of the State of California would require a variety of actions, several of the nature of constitutional amendment. It would be necessary to classify and arrange in suitable groups or departments the different public offices. The number of such departments would differ under different plans, but taking into consideration the volume of the state's business it would doubtless require at least six, for instance: Public Safety and Welfare; Justice; Finance and Corporations; Education and Professions; Charities and Corrections; Public Works and Agriculture. The first four departments would be combined with the present offices of Secretary of State, Attorney General, Treasurer and Superintendent of Public Instruction. This would require constitutional amendments making these offices appointive and enlarging their duties. Another amendment would be necessary, empowering the Legislature to deal with the Board of Prison Directors, at present a constitutional body, in order to constitute the fifth department. With a few exceptions the rest could be done by statute. The Railroad Commission and the Board of Regents of the State University, for considerations expressed at the beginning of this discussion, would remain constitutional bodies. The State Controller should be vested with ample powers of audit and investigation and should remain a constitutional officer elected by the people at the same time as the governor.

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